Per G.S. SINGHVI, CJ

Whether in exercise of power vested in it under Article 226 of the Constitution of India, the High Court can nullify the decision taken by the competent authority in the matters involving execution of irrigation projects is the question, which arises for determination in this appeal filed by Shri Boyapati Ramesh and four others against order dated 28.03.2006 passed by the learned Single Judge in Writ Petition No.17225 of 2005, whereby she declined to nullify the approval

granted by Chief Engineer, Central Designs Organization (respondent No.4) to R4 alignment of right main canal of Polavaram Project, Package No. III.

The appellants claim to be ayacutdars of Achannapalem, Avapadu and Singarajupalem villages of Nallajerla mandal, West Godavari district. They filed writ petition questioning the approval accorded by respondent No.4 to the alignment of right main canal of Polavaram Project from K.M. 46.000 to KM. 68.283 vide proceedings dated 22.06.2005. In the affidavit filed by appellant No.1, it was averred that right main canal of Polavaram Project (now known as Indira Sagar Project) intends to irrigate 3.2 lakhs acres of land through the natural gravity method in West Godavari District besides supplementing irrigation facilities to another 8 lakhs acres in Krishna Delta. It was further averred that the construction of right main canal has been divided into seven packages and land of the writ petitioners fall in between K.M. 46 and K.M.68 which forms part of Package No. III. According to appellant No.1, M/s Hindustan Construction Company (for short 'the company'), which was engaged for execution of package No. III, had suggested six alternatives for alignment of the canal from KM 46 to KM 68, but in complete disregard of suggestion made by the company, respondent No.4 arbitrarily approved fourth alignment which is likely to jeopardize and endanger their lands. They are said to have represented to the Chief Minister, Minster for Major Irrigation, Member of Legislative Assembly and Engineer-in-Chief for rejecting the approval accorded by respondent No.4, but no action was taken by them.

In the counter filed by Shri M. Venkateswara Rao, Chief Engineer, Indira Sagar Project, Dowleswaram, East Godavari District, it was averred that work of package No.III, which covers the stretch from KM 38.199 to KM 71.50, was entrusted to the company under Turnkey Engineering Procurement and Construction System, under which, the contractor is responsible for detailed investigation, preparation of drawings, getting approval of respondent No.4 and also executing work within the specified time-frame. It was further averred that various proposals submitted by the company regarding alignments were considered by respondent No.4, who, after thorough examination, finally approved R4 alignment, which covers length from KM 46.00 to KM 68.00. Shri Venkateswara Rao further averred that decision in the matter of alignment was taken after detailed discussion in the meeting held between respondent No.4,

Chief Engineer, Indira Sagar Project, Shri R., Satyanarayana, (Expert Designs) and Shri B. Rosaiah (Expert Designs), who expressed that as the canal has to carry a very big discharge of 497 cumecs and flashy nature of floods of Yerrakalva river, it was advisable to avoid embankment reaches. In paragraphs 4, 6 and 7 of his affidavit, Shri Venkateswara Rao averred as under:

> "It is submitted that tenders were called basing on detailed investigations carried out during 1983-84 under Polavaram barrage investigation unit. The Polavaram Barrage is now officially renamed as Indira Sagar Project. As per the EPC system of contract the contracting agency under the departmental guidance has to conduct detailed investigations, and trace the most suitable alignment and satisfies the CE, CDO, Hyderabad guidelines and also Technical Committee constituted by the Government of Andhra Pradesh. The Chief Engineer, Central Designs Organization is the final authority in finalizing the alignment for execution. The firm Hindustan Construction Company Limited, has investigated seven alternative alignments under technical guidance of CE, CDO and technical committee. The CE, CDO, Hyderabad after thorough examination has finally approved the R4 alignment which covers the length from Km 46.00 to Km 68.00, vide Lr. No. CE/CDO/B&Cs II/3105/05/431 dated 22.06.2005. In the minutes of meeting recorded in the chambers of the Chief Engineer, Central Designs Organization, Hyderabad, consisting of the CE, CDO, the Chief Engineer, ISP, Sri R. Satyanarayana, Expert Designs and Sri B. Roshaiah, Expert Designs, for finalizing alignment(copy enclosed) they have expressed the opinion that as the canal has to carry a very big discharge of 497 cumecs and flashy nature of floods of Yerrakalva river that is to be crossed in this reach, it is advisable to avoid embankment reaches. The minutes of meeting may be read as part and parcel of this counter affidavit. Further the Yerrakalva river is to be regarded suitably (removing silt in the bed to lower the bed level) at crossing for required clearance. As per the guidelines of the CE, CDO, the alignment shall be taken in cutting up to FSL Depth and maximum embankment and deep cut shall be avoided as far as possible. In this particular case there is no scope of running alignment in normal cutting. The only alternative is either to run in heavy embankment or in deep cutting. If the canal is taken in embankment it will result in breaches and large scale destruction due to heavy discharge of right main canal, and maintenance will be costly. Therefore, the only possibility is to run the alignment in cutting reach. As such

the R4 alignment is considered.

It is submitted that under EPC contract system even though the contracting agency is responsible for carrying out detailed investigation, formulation of proposals they are bound to execute the works as per the approved alignment by the competent authority i.e. The CE, CDO, HYD. Violating the guidelines of the department and engineering principles, the contracting agency submitted proposals initially, only to economise the cost with intention of earning maximum profits sacrificing its utility and satisfactory performance. As these proposals are unacceptable to the department as per basic engineering principles, the contracting firm was advised to modify the initial proposals to suit the guidelines and the principles of engineering which is a condition in the contract also. The contracting agency despite of clear instructions proposed several alternatives keeping only the profit margin in their mind and deliberately avoided the most feasible alignment with ulterior motive of swindling Government money by pressurizing the department authorities and by threatening about the claims. As there can be no comparison of cost with unapproved and unacceptable alignment the contracting agency finally submitted the most technically viable alignment i.e.R4 which was recommended by the respondent 2 and technical committee and approved by the CE/CDO, Hyd.

It is submitted that due to finalization of R4 alignment the requirement of land acquisition may be more, when compared to requirement of land, it is taken in embankment. Its trouble free performance during its existence is the prime criteria for finalizing the alignment and not the extent of land involved. Keeping in view of technical parameters the alignment is preferred. Accordingly, the CE/CDO, Hyd and the Technical Committee approved the R4 alignment. The value of cost of additional land is negligible when compared to volume of risk involved if the canal runs in embankment. Hence, the allegation of petitioners that alignment is changed at behest of certain external agency is completely baseless and made with selfish intensions of safeguarding their lands from acquisition which are falling in the approved alignment."

The learned Single Judge, after taking cognizance of the rival pleadings, held that the Court cannot go into technical viabilities and economics of the Project and interfere with the decision taken by the expert body, unless such a decision is contrary to law or is tainted by mala fides or is against public interest. The

learned Single Judge further held that the Court cannot sit in appeal over the decision taken by the competent authorities in such like maters.

Shri D. Prakash Reddy, learned Senior Advocate, with his usual vehemence, argued that the decision taken by respondent No.4 not to approve the alternative alignment suggested by the company is based on extraneous considerations and the learned Single Judge gravely erred by refusing to entertain the appellants' challenge to the proceedings dated 22.06.2005. Learned counsel submitted that there is huge possibility of vast track of land getting inundated due to wrong alignment of canal and, therefore, the Court should entertain the petition in larger public interest.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed. Rather, we are in complete agreement with the learned Single Judge that in exercise of power under Article 226 of the Constitution of India, High Court cannot sit in appeal over the judgment of the technical experts and nullify the decision taken by the competent authority by assuming that the alternative suggested by a contractor is more suitable or economical. The argument of Shri Reddy, which is suggestive of malus animus on the part of respondent No.4 in approving R4 alignment of Package No.III of right main canal of Indira Sagar project, cannot be entertained because neither any factual foundation has been laid for such argument nor the officer concerned has been impleaded as party respondent so as to enable the Court to call upon him to answer the charge of personal mala fides. In this connection, we deem it proper to remind ourselves of the Constitution Bench judgment in **E.P. Royappa v. State of Tamilnadu**, wherein the Supreme Court observed that allegations of mala fides are often levelled, but scarcely proved. The Supreme Court further observed that graver are allegations of mala fides, heavier is the burden on the petitioner to establish the same. Therefore, vague and fanciful averments contained in the writ petition suggesting that respondent No.4 had acted in a particular manner due to extraneous reasons, cannot be made basis for recording a finding that his refusal to accept the suggestion made by the contractor is tainted by mala fides.

We are further of the view that the futuristic possibility of some land getting

inundated due to the implementation of a project, which is meant for larger public interest, does not cloth this Court with the jurisdiction to interdict and pass orders, which may result in frustration of a public-oriented project. In **Narmada Bachavo Andolan v. Union of India**, a three-Judge Bench of the Supreme Court considered the scope of judicial review, in matters involving execution of irrigation projects etcetera, and laid down the following principles:

> "The Courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken. The Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.
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> The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The Courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.
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> When two or more options or view are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

The learned Single Judge has taken note of the above limitation on the Court's power of judicial review in such matters and we whole-heartedly agree with her that interference by the Court in development-oriented projects should be made in rarest of rate cases and that too when the Court is convinced that the decision taken by the public authority is vitiated due to violation of the mandate of law or any constitutional provision or is against larger public interest.

Since the appellants have failed to make out a case, which falls within these parameters, we decline to entertain their prayer for nullification of the decision taken by respondent No.4 to accord approval to R4 alignment of Pacakage No. III of right main canal of Indira Sagar Project.

With the above observations, the appeal is dismissed.

G.S.SINGHVI, CJ

G.BHAVANI PRASAD,J

msv/ksld.